Simon v. Adzilla, Inc [New Media] et al Doc. 638 Att. 6

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 08-16745

CONNECTU, INC., *et al.*,
Defendants—Appellants,

v.

THE FACEBOOK, INC., *et al.*,
Plaintiffs—Appellees.

DECLARATION OF SEAN F. O'SHEA IN SUPPORT OF EMERGENCY MOTION TO STAY EXECUTION OF DISTRICT COURT'S JULY 2, 2008, JUDGMENT AS AMENDED BY ORDER OF AUGUST 8, 2008

Steven C. Holtzman
Boies, Schiller & Flexner LLP
1999 Harrison Street, Suite 900
Oakland, CA 94612

David A. Barrett
Boies, Schiller & Flexner LLP
575 Lexington Avenue, 7th Floor
New York, NY 10022

D. Michael Underhill
Boies, Schiller & Flexner LLP
5301 Wisconsin Avenue NW
Washington, D.C. 20015

Attorneys for Defendant and Appellant ConnectU, Inc.

Sean F. O'Shea
O'Shea Partners LLP
90 Park Avenue, 20th Floor
New York, NY 10016

Attorneys for Nominal Defendants and Appellants Cameron Winklevoss, Tyler Winklevoss, and Divya Narendra

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I, Sean F. O'Shea, declare as follows:

1. I am a partner with the law firm of O'Shea Partners LLP, counsel for Cameron Winklevoss, Tyler Winklevoss, Divya Narendra (the "Founders") and ConnectU, Inc. ("ConnectU"). I am licensed to practice law in New York and Illinois. I am also admitted to various federal courts including the Courts of Appeals for the Second and Seventh Circuits; and the District Courts for the Southern and Eastern Districts of New York. I appeared in the case below per an order of the district court granting my application to appear *pro hac vice*. I intend to file an application for admission to the Bar of this Court. Unless otherwise noted, I have personal knowledge of the facts set forth in this Declaration.

2. On August 6, 2008, I appeared at a hearing before Judge Ware related to the Founders' Motion to Intervene and ConnectU's Motion to Stay Execution of the July 2, 2008 Judgment. At the August 6, 2008 hearing, on behalf of the Founders, I joined in ConnectU's Motion to Stay.

3. On August 8, 2008, the district court denied the Motion for a Stay for the reasons set forth in the Declaration of D. Michael Underhill in support of the instant Motion for a Stay. The district court denied the Founders' motion to intervene on the grounds that intervention was unnecessary as the Founders were "nominal defendants" in the ancillary proceeding that resulted in the lower court's July 2, 2008 Judgment, and therefore had a right to appeal that Judgment.

4. The district court's August 8 Order states, as a reason for denying the stay, that "ConnectU admits that it will pursue other litigations with respect to its former counsel to this case and incur liabilities to its lawyers."

5. As I clarified to Judge Ware at the August 6 hearing, there is no pending malpractice action by ConnectU or the Founders with respect to their former counsel, Quinn Emanuel. Quinn Emanuel, in fact, commenced an arbitration against ConnectU and its shareholders to collect Quinn Emanuel's fee. The Founders and ConnectU commenced a special proceeding in New York State Supreme Court seeking only to *stay* that arbitration. New York Supreme Court Justice Richard Lowe granted a temporary stay of the arbitration pending a decision on the motion for a permanent stay.

6. ConnectU and the Founders may bring a malpractice action against their former counsel. The legal fees and costs associated with such a malpractice claim will not be paid by ConnectU. I have confirmed with one of the ConnectU shareholders, Howard Winklevoss, that he—not ConnectU--will bear those fees and costs.

7. In its August 8, 2008 Order, the district court granted the Founders additional time to notice an appeal of the July 2, 2008 Judgment.

8. On August 11, 2008, the Founders will Notice their Appeal of the July 2, 2008 Judgment and the August 8, 2008 Order.

9. The Founders join in ConnectU's Emergency Motion to Stay the

Execution of the District Court's July 2, 2008 Judgment, as Amended by its Order on August 8, 2008.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed this 11th day of August, 2008.

/s/ Sean F. O'Shea

Sean F. O'Shea